

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Streamlining Deployment of Small Cell)	WT Docket No. 16-421
Infrastructure by Improving Wireless Facilities)	
Siting Policies)	
)	
Mobilitie, LLC Petition for Declaratory Ruling)	

COMMENTS OF LOUISVILLE/JEFFERSON COUNTY, KENTUCKY METRO GOVERNMENT

These Comments are filed by Louisville/Jefferson County, Kentucky Metro Government (hereinafter "Louisville Metro") in response to the Public Notice, released December 22, 2016, in the above-entitled proceeding.

INTRODUCTION

Louisville Metro urges the Commission to exercise caution as it works to enable the widespread deployment of small cell infrastructure throughout the nation. Louisville Metro opposes a federal one-size-fits all preemption of local siting authority, and asks the Commission to consider carefully the many differences between communities that necessitate local decisions: variations in state constitutions and statutes, geographic challenges, climate variations, size, budgetary and staff resources, aesthetic character, the type and amount of existing infrastructure, real estate values, cost of living, and more. As a municipality which has strived to accommodate and encourage wireless deployment, we ask the Commission to avoid placing any further restrictions on cities as they collaborate with their local wireless carriers and infrastructure providers to integrate this very new technology, and very new approach to infrastructure development, into their planning and zoning processes in a way that preserves and protects the finite rights of way belonging to their residents.

Louisville Metro has made great strides since 2013 to encourage the development of high speed internet access in our community, both wired and wireless. Louisville Metro adjusted our communications franchise periods from 15 to 20 years to enable companies a longer period of time to recoup their large infrastructure investments. Additionally, Louisville Metro reduced our bonding requirements for companies doing work in the telecommunication space.

Louisville Metro also understands some of the challenges facing companies looking to install new fiber or wireless devices in the right-of-way. In 2016, we introduced new permitting processes that allow companies to file for right-of-way encroachment permits by census block groups, instead of by individual blocks of streets or addresses. This aligns better with crews doing work on multiple streets for projects that require fiber installation for several blocks, or even miles.

Further, Louisville Metro understands that introducing a new network to our city can be a challenge due to the barriers with pole make-ready delays as companies are tasked to make room for a new attaching utility. In February 2016, the Louisville Metro Council passed a "one touch make ready" ordinance. The desired outcome of this make ready ordinance was to speed up movement of existing attached utilities on poles that need to make way for new telecom companies that want to attach to a pole with their fiber or

equipment. This ordinance allows for the rapid deployment of new fiber and wireless networks, and benefits our citizens by bringing new offerings to market faster.

Mayor Greg Fisher has stated:

“A high-speed broadband network has quickly become viewed as critical urban infrastructure, similar to electricity, water and roadways. As a city we want to create a world-leading gigabit capable network with comparable and reasonable prices that will foster innovation, drive job creation and stimulate economic growth.”

Louisville Metro has joined Next Century Cities as a great way to work with other cities facing similar challenges. Collaboration is imperative and it fuels the exchange of ideas which contributes to the success of cities around the country. Next Century Cities will help provide an adequate foundation to propel Louisville forward in a technology-based economy.

Louisville Metro is a city on the move, especially when it comes to broadband.

From the start, Louisville Metro made a commitment to make general, business friendly-fiber-friendly policy changes to attract companies. In 2013, Louisville Metro issued a global call for companies and organizations to consider building a high speed gigabit network in Louisville Metro. The request's three goals:

- Creating a world-leading gigabit-capable network across the city to foster innovation, drive job creation and stimulate economic growth;
- Providing free or heavily discounted gigabit 100MB (minimum) internet service over a wired or wireless network to underserved and disadvantaged residents;
- Delivering gigabit internet service at prices comparable to other gigabit fiber communities across the nation;

After a successful RFI-RFP process, Louisville's Metro Council, in July, approved three new 20 year franchise agreements for fiber network buildout with: BGN, SiFi, and FiberTech.

Louisville Metro continues to focus on grassroots support for the future network from city residents, academics, and the business community. Engagement occurs through a web-based tool, Louisville Fiber, providing information on the three vendors, project updates, and basic facts about fiber infrastructure.

We have encouraged provisions of wireless hot spots in underserved areas.

Listed below are Louisville Metro's responses to the specific questions posed by the FCC Public Notice dated December 22, 2016:

1. What criteria does Louisville Metro apply to control the placement, construction, and modification of personal wireless service facilities?

The following criteria are found in Section V(A)(1&2) of LMPW's Utility Policy, 7-1-16. We consider, but are not limited to the following:

- **Poles.** Locations and effects on public safety, public comment and technical compatibility to proposed DAS network.
- **Ground Level Elements CGLE's).** As applied to DAS networks are the battery back-up

and radio.

- **Sequential Preference Standards.** Checklist of standards that assist in siting of DAS elements.
- **Co-Location on existing utility structures.** Considers options for using existing utility structures (poles).
- **FCC-RF Compliance Assessment.** Prior to approval of a DAS system the applicant submits an FCC _ RF compliance assessment prepared by a third party to demonstrate that the proposed installation will comply with all Federal RF exposure guidelines during all conditions of operation.
- **Public Notice and Comment Period.** Before final approval for the location of any small cell antenna, including its appurtenances as previously described herein, the Applicant shall, at their own expense, provide written notification by first class mail to the Metro Council member of the affected property and to all property owners located within 150 feet of the proposed installation of the Applicant's intent to install such equipment. The applicant shall provide a copy of the notice and a list of everyone to whom the notice was mailed to the Department of Public Works, and shall certify in writing that the notice was sent pursuant to the requirements of this section. The notice shall include (a) an explanation of the purpose of the small cell antenna, (b) a description of the proposed location, including dimensions for the base and supporting pad, and a depiction of the general appearance, (c) information addressing public safety concerns related to RF emissions, and (d) contact information for the Applicant and a statement advising the property owner that he or she may contact the Applicant within fourteen (14) days after receipt of the letter to discuss any questions or concerns.
No permit shall be issued for any small cell antenna or related appurtenance until twenty-one (21) days after the applicant provides the certification to Public Works that the notice required by this section was mailed.

2. Are these criteria reasonable in accordance with 47 U.S.C. §332(c)(7)(A)?

The criteria used by Louisville Metro are reasonable within the scope of the statute relating to placement, construction and modification.

3. What criteria does Louisville Metro apply to manage use of public right of ways?

- Public Safety
- Protect existing public assets in the ROW
- Maintain safe traffic conditions
- Minimize inconvenience to the public
- Aesthetics
- Minimize and control risk to the public associated with permanent structures in the ROW

4. Are these criteria reasonable in accordance with 47 U.S.C. §253(c)?

Yes, they are fair and reasonable, competitively neutral, and nondiscriminatory.

5. What, if any, compensation does Louisville Metro require telecommunications providers to pay for the use of public rights of way?

KRS 136.660 (1) prohibits Louisville Metro from levying any franchise fee on telecommunications service, or collecting any franchise fee or tax from providers or purchasers of telecommunications services. KRS 136.660 (2)(a) states that for purposes of KRS 136.660, "franchise fee or tax" means any tax, charge, or fee, that is required by ordinance or agreement to be paid to a city or county by or through a provider, in its capacity as a provider, regardless of whether the tax, charge, or fee, is:

- 1. Designated as a franchise fee, sales tax, excise tax, user fee, occupancy fee, subscriber charge, license fee, or otherwise;**
- 2. Measured by the amounts charged for services, the type or amount of equipment or facilities deployed, or otherwise;**
- 3. Intended as compensation for the use of public or private rights-of-way, the right to conduct business, or otherwise; or**
- 4. Permitted or required to be separately stated on the purchaser's bill.**

Thus state law currently prohibits Louisville Metro from requiring any telecommunication provider to pay for its use of its rights-of-way.

- 6. Is the compensation "fair and reasonable," "competitively neutral and nondiscriminatory," and "publicly disclosed" in accordance with 47 U.S.C. §253(c)?**

State law currently prohibits Louisville Metro from requiring any telecommunications provider to pay for its use of its rights-of-way.

- 7. Is the compensation directly related to the provider's use of the right of way and the costs that use imposes on the local government?**

Louisville Metro does not currently receive compensation from telecommunications providers for the use of the rights of way.

- 8. Which, if any, Louisville Metro actions (or inaction) have the effect of hindering the introduction of new services, obstructing efforts to improve existing services or make networks more robust, or deterring prospective service providers from entering markets?**

None of Louisville Metro actions (or inaction) have had the effect of hindering the introduction of new services, obstructing efforts to improve existing services or make networks more robust, or deterring prospective service providers from entering market. As stated above, Louisville Metro has made great strides since 2013 to encourage the development of new services in our community, both wired and wireless.

Based on our 'real-time' experience to date, none of the requirements set forth in the Louisville Metro Utility Policy, Section V(A)(1&2) have had the effect to hinder or obstruct deployment of new service of networks. Louisville Metro has approved 100% of the small cell applications.

- 9. How long does it typically take Louisville Metro to process macro cell siting applications?**

2015 CELL TOWERS, (11)

15Cell1000
6060 Brownsboro Park Blvd.
Submitted: March 9, 2015
Completed: April 8, 2015
Approved: May 6, 2015 – DRC¹

15Cell1002
1408 Madison Street
Submitted: May 22, 2015
Completed: August 26, 2015, per conditions
Approved: July 15, 2015 – DRC

15Cell1004
9316 Taylorsville Road
Submitted: August 17, 2015
Completed: October 13, 2015
Approved: December 16, 2015 – DRC

15Cell1006
107 Evergreen Road
Submitted: September 15, 2015
Completed: November 6, 2015
Approved: November 18, 2015 – DRC

15Cell1008
303 New Venture Drive
Submitted: October 7, 2015
Completed: February 6, 2016, per conditions
Approved: December 16, 2015 – DRC

15Cell 1010
907 Mount Holly Road
Submitted: November 16, 2015
Completed: May 11, 2016, per conditions
Approved: January 6, 2016 – DRC

2016 CELL TOWERS, (10)

2016 Cell1000 (Extension)
202 Old Harrod's Creek Road
Submitted: March 31, 2016
Approved: PDS² staff on April 19, 2016

15Cell1001
15110 Brush Run Road
Submitted: April 30, 2015
Completed: June 15, 2015
Approved: June 17, 2015 – DRC

15Cell1003
9212 Thixton Lane
Submitted: July 13, 2015
Completed: September 11, 2015, per conditions
Approved: September 2, 2015 – DRC

15Cell1005
13508 West Rehl Road
Submitted: September 15, 2015
Completed: December 2, 2015
Approved: November 18, 2015 – DRC

15Cell1007
6312 Routt Road
Submitted: October 1, 2015
Completed: March 4, 2016, per conditions
Approved: November 18, 2015 – DRC

15Cell1009
2707 Millers Lane
Submitted: November 3, 2015
Completed: February 29, 2016, per conditions
Approved: January 6, 2016 – DRC

16Cell1001 (Extension)
6633 Dixie Highway
Submitted: March 31, 2016
Completed: December 2, 2015
Approved: PDS staff on April 19, 2016

¹ "DRC" – Development Review Committee; a sub-committee of the Louisville/Jefferson County Planning Commission.

² "PDS" – Planning and Design Services; staff to the Louisville/Jefferson County Planning Commission.

16Cell1002
6500 Greenwood Road
Submitted: April 19, 2016
Completed: April 23, 2016
Approved: June 15, 2016 – DRC

16Cell1004
4610 R Manslick Road
Submitted: July 14, 2016
Approved: PC - April 6, 2017

16Cell1006
4499 Paralee Drive
Submitted: July 27, 2016
Approved: September 14, 2016 – DRC

16Cell1008
5225 Murray Lane
Submitted: November 1, 2016
Completed: December 6, 2016, per conditions
Approved: November 30, 2016 – DRC

16Cell1003
901 West Magnolia Avenue
Submitted: June 21, 2016
Completed: August 15, 2016
Approved: August 17, 2016 – DRC

16Cell1005 (Compound Expansion)
4316 Cane Run Road
Submitted: July 19, 2016
Approved: PDS staff September 12, 2016– DRC

16Cell 1007
1306 Evergreen Road
City of Anchorage Replacement
Submitted: October 31, 2016
Approved: PDS staff November 17, 2016 – DRC

16Cell 1009
3800 Fern Valley Road
Submitted: December 9, 2016
Completed: January 5, 2017
Approved: January 26, 2017 – DRC

10. How long does it typically take Louisville Metro to process small wireless facilities or DAS applications?

If the application is complete and, there are no revisions to any of the small cell locations (principally due to public comment) then application packets typically have been approved in 30 days. This does not include right of way encroachment permits to actually do the work. Right-of-way encroachment permits are typically reviewed and approved in one to two weeks depending on completeness of the submission and staff workload.

In 2016, Louisville Metro had several applications for large areas extending virtually the entirety of Jefferson County. Jefferson County is comprised not only of Louisville Metro, but 83 other smaller municipalities, all of whom have franchise authority pursuant to the Kentucky Constitution. In order to facilitate deployment, Louisville Metro initiated an interlocal agreement among all the municipalities in Jefferson County to authorize Louisville Metro to advertise for bids, to review applications, to issue a Uniform Franchise Agreement between all the franchisees and all of the municipalities, and to administer placement of the facilities within the rights-of-way throughout the county. This demonstrates Louisville Metro's willingness to facilitate and expedite deployment.

The following is a list of all of the small wireless facilities or DAS applications that have been submitted by Metro Louisville to date. Please note that 100% of said applications have been approved and were processed in a timely manner.

1) BGN Networks, LLC
Submitted: May 1, 2014
Approved: July 24, 2014

2) Fibertech Technologies Networks, LLC
(Lighttower)
Submitted: May 1, 2014
Approved: July 24, 2014

3) SiFi Networks Louisville, LLC
Submitted: May 2, 2014
Approved: July 24, 2014

5) Extenet Systems, Inc.
Submitted: July 20, 2015
Approved: September 10, 2015

6) Goff Network Technologies, Inc.
Submitted: March 31, 2016
Approved July 28, 2016

8) Shelby Communications
Submitted: March 31, 2016
Approved June 9, 2016

4) Crown Castle NG Central Inc.
Submitted: May 19, 2014
Approved: September 10, 2015
(bid submitted after advertised bid period closed but was held and approved after the next bid advertisement)

7) Google Fiber Kentucky, LLC
d/b/a USA Fiber
Submitted: March 31, 2016
Approved: June 9, 2016

11. How often are applications denied on the basis of: (i) their inadequacy or incompleteness; (ii) engineering defects or other technical problems; (iii) environmental impacts; (iv) aesthetic concerns; (v) perceptions of excessive of overly dense deployment of wireless network facilities in particular areas; or (vi) other reasons?

No applications have ever been denied. Any deficiencies are resolved between Metro reviewers and the provider/applicant. In accordance with our procedure, complete applications are those that have considered:

- **Engineering and technical concerns;**
- **Public safety;**
- **Environmental impacts; and**
- **Aesthetics**

Typically, any delays or problems come from siting concerns generated in the preliminary siting and public comment phases. These have historically been quickly addressed by the provider/applicant during the 21 day comment/response period. Almost all concerns raised to date have been addressed by the applicant coordinating with Louisville Metro Public Works as well as the affected citizens.

12. Are some parties' applications granted more frequently or reviewed more expeditiously than others, and if so, why?

All applicants are treated equally in accordance with the steps outlined in Louisville Metro Public Works' Utility Policy, previously mentioned. Our procedures as outlined in our Utility Policy don't allow for preferred treatment of one applicant over another.

13. Should the FCC establish presumptively reasonable timeframes of 120 days for processing batches of collocation applications and 180 days for processing batches of applications for deployments other than collocations?

It is not necessary for the FCC to establish presumptively reasonable time frames. Louisville Metro has demonstrated that such time frames are not necessary. Typically, a batch will include both types. Co-locations do not have any discretionary review so as to encourage co-locating. This

is the case for both macro cells and DAS systems. Both cases require permits if any ground disturbing activity is in the ROW.

14. If so, what should be the minimum number of sites to qualify as a "batch" for this purpose?

It is not necessary for the FCC to be involved in this process.

15. Should there be multiple tiers of batch sizes depending on how many poles or antennas are involved?

It is not necessary for the FCC to be involved in this process.

16. Would the FCC serve the public interest by issuing clarifications of any of the terminology in 47 U.S.C. §253(c), as requested by Mobilitie in its Petition?

No new federal regulation is necessary. Although clarification is good, it also has the potential to cause loss of local control. Fair and reasonable compensation may vary among the multitude of jurisdictions.

17. How should the statutory term "fair and reasonable" be defined?

No new federal regulation is necessary. Fair and reasonable implies equal application of "fairness and reasonableness" across the group or pool of telecommunications providers.

18. What are the appropriate criteria for state and local governments to apply in establishing fair and reasonable compensation?

No new federal regulation is necessary. Fair and reasonable compensation may vary among the multitude of jurisdictions.

19. Must up-front fees or recurring compensation for use of local governments' rights-of-way be based on costs, and if so, what measure of costs would be appropriate?

No new federal regulation is necessary. Louisville Metro charges a \$1,000 application fee for new telecommunications providers. There may be additional nominal fees for encroachment permits. Please note that said encroachment permit fees are charged to all utilities doing construction in the rights of way

20. Do the rules governing the computation of cost-based rates for pole attachments and access to private utilities' rights of way provide useful analogs for the "reasonable compensation" that state or local governments may assess?

Rates that pole owners may charge attachers are regulated by the Kentucky Public Service Commission. Pole attachment rates are applied on a per pole basis, whereas the communications fees are charged based on utilization of space, and therefore are not comparable for this purpose.

21. What types of expenses may local authorities recover through up-front and recurring charges, respectively?

Louisville Metro charges a \$1,000 application fee for new telecommunications providers. There may be additional nominal fees for encroachment permits. Please note that said encroachment permit fees are charged to all utilities doing construction in the rights-of-way

22. Should recurring charges be limited to "incremental personnel and other costs for monitoring the facilities (for example, to ensure they are maintained in compliance with signage and other requirements?)"

No. There could be other costs associated with the right-of-way that are not captured in those categories. No new federal regulation is necessary.

MOBILITE ALSO ARGUES THAT THE FCC SHOULD DEEM FEES TO BE "COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY" WITHIN THE MEANING OF 47 U.S.C. § 253(C) ONLY IF THEY "DO NOT EXCEED THOSE IMPOSED ON OTHER PROVIDERS FOR SIMILAR ACCESS."

23. Is this an appropriate or the best definition for the statutory phrase "competitively neutral and non-discriminatory"?

The current language in 47 U.S.C. § 253(c) is sufficient. No new federal regulation is necessary.

24. What factors could properly be taken into account if the FCC were to interpret the statutory nondiscrimination requirement, as Mobilite proposes, based on "a comparison of the relevant charges and the reasons for them," so that fees paid by different providers could vary only if "they cover dissimilar deployments, or where one deployment causes materially greater burdens on a right of way than another"?

No new federal regulation is necessary.

25. Should the FCC adopt Mobilite's proposal to "declare that localities must at least disclose to a carrier upon request the charges they have imposed on all carriers for access to rights of way," including "not only the amount of the charges" but also "how they [were] calculated"?

No new federal regulation is necessary. Under Kentucky law, Louisville Metro currently does not charge telecommunications providers for access to the rights of way. Also, under Kentucky law, any information relating to governmental fees and their calculations is subject to open records disclosure laws.

26. To what extent is this information available in Louisville Metro?

As stated above, Under Kentucky law, Louisville Metro currently does not charge telecommunications providers for access to the rights of way. Louisville Metro's telecommunication ordinance and telecommunication franchise application forms are available on-line. The can be accessed on Louisville Metro's website: www.Louisvilleky.gov/publicworks.

CONCLUSION

Based upon this submission, it should be clear that Louisville Metro encourages and supports the deployment of the latest technologies within its jurisdiction. Louisville Metro has approved 100% of the small cell applications. The FCC and the industry should provide documentation of the problems that require federal intervention. Such intervention poses legal issues in that property rights and police powers have long been recognized as reserved to the states where varied economic, social and physical conditions can affect "one size fits all" regulatory schemes. Additionally, the FCC must be careful to ensure that existing providers and technologies do not discourage or harm developing technologies and business plans in order to preserve opportunities for future innovation and service that will benefit the consumer. Louisville Metro believes that, based upon its experience, no new

DRAFT

federal regulation is necessary.

Louisville Metro would like to thank the Commission for its efforts to better understand the work being done at the local government level to ensure safe, responsible deployment of wireless infrastructure, particularly those built in the public rights-of-way. We strongly urge the Commission to consider our comments, as well as those submitted by communities across the country, before taking any action that may adversely affect local governments' rights-or-way authority.

Respectfully submitted,

/s/ Paul B. Whitty

Paul B. Whitty

Assistant Jefferson County Attorney

Office of the Jefferson County Attorney,

Michael J. O'Connell

Fiscal Court Building

531 Court Place, Suite 900

Louisville, Kentucky 40202

(502) 574-0129

EXHIBIT A

“Louisville Speeds Toward Super-Fast Internet.” *Denise Linn*, 17 September 2014, www.nextcity.org/daily/entry/louisville-fast-internet-fiber-network.

“Louisville Joins Next-Generation Broadband Communities to Launch Next Century Cities.” *City of Louisville, Kentucky*, 21 October 2014, www.louisvilleky.gov/news/louisville-joins-next-generation-broadband-communities-launch-next-century-cities.

“In depth on pole attachments, “one touch make ready” and what’s going on in Louisville.” *FTTH Council*, 16 March 2016, www.medium.com/fiber-on-fire/in-depth-on-pole-attachments-one-touch-make-ready-and-what-s-going-on-in-louisville.

“Louisville earns national award for plans to develop Gigabit Experience Center.” *The Lane Report*, 16 August 2016, www.lanereport.com/66590/2016/louisville-earns-award-for-plans-to-develop-gigabit-experience-center/

“Louisville wins ultra high-speed internet grant.” *Insider Louisville, Mickey Meece*, 16 August 2016, www.insiderlouisville.com/business/louisville-wins-ultra-high-speed-internet-grant/

“FCC: Louisville’s One Touch policy doesn’t violate federal law.” *The Tennessean, Jamie McGee*, 31 October 2016, <http://www.tennessean.com/story/money/tech/2016/10/31/fcc-louisvilles-one-touch-policy-doesnt-violate-federal-law/93066984/>



The  Works

Louisville Speeds Toward Super-Fast Internet

BY DENISE LINN | SEPTEMBER 17, 2014



(AP Photo/Brian Bohannon)

Louisville is the home of the Kentucky Derby and the University of Louisville, but in the not-so-distant future, it might also be home to a super-fast Internet connection.

As was the case with many other cities, it was the Google Fiber selection process that initially raised Louisville's interest in gigabit speeds. So, in 2013, when Chief Innovation Officer Ted Smith listened to Gig.U Executive Director Blair Levin discuss the economics of fiber deployment at the Project on Municipal Innovation Conference, his attention was captured. Smith followed up with Levin the next week and got a model RFI for the city.

Less than a year after that day, Louisville has already transitioned from interest to action. After a successful RFI/RFP process, the Metro Council in July approved three new 20-year franchise

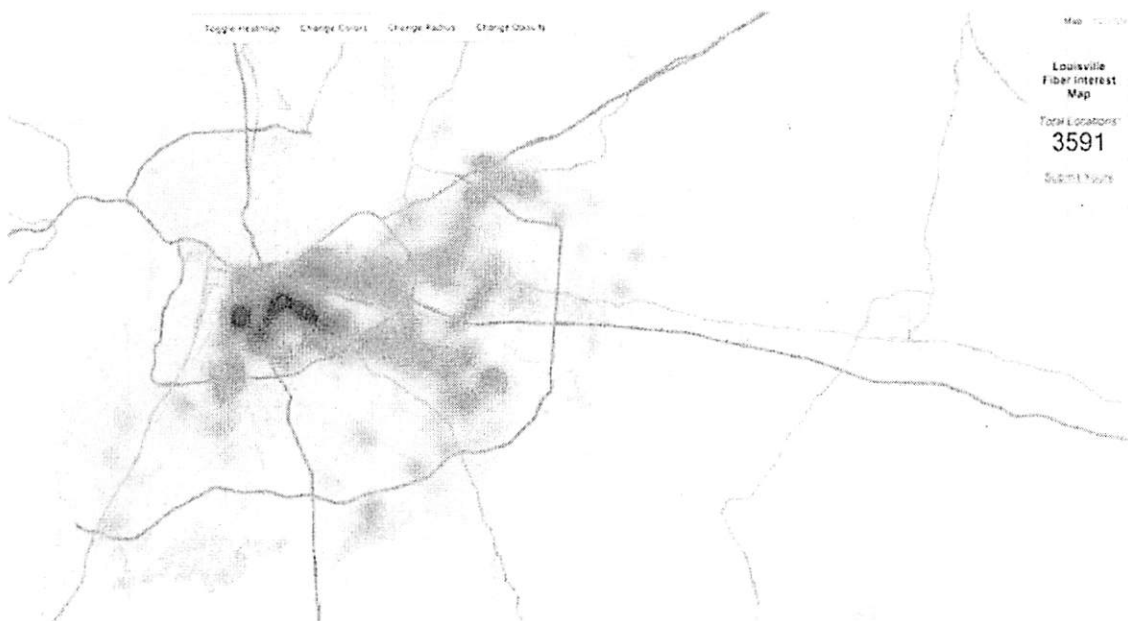
agreements for fiber network buildout — one with Louisville-based BGN Networks, one with London-based SiFi and another with New York-based FiberTech.

Visualizing and Aggregating Community Demand

Though Louisville's future network will not be supported with public funds (in contrast to projects in Wilson, North Carolina or Lafayette, Louisiana, for example), initial momentum certainly came from the bottom up. Demand for faster speeds was fostered and articulated by the city's residents, academics and the business community.

"Something like this can't be anyone's pet project," Smith says. "There has to be a vocal group in the community."

To translate those voices into something tangible, local advocates launched Louisville Fiber — a web-based tool that asked residents who wanted a gigabit fiber network to input their address. The resulting heat map was informative for policymakers and also visualized demand for prospective vendors. Now that Louisville has already attracted and approved specific vendors, the website has transitioned from an organizing platform to an informational platform. The homepage features links to the SiFi, BGN and FiberTech websites, along with project updates and basic facts about fiber infrastructure.



Embracing the RFI as a Learning Process

The city government released its RFI in November of 2013 and received six responses. What followed was a series of regulatory course corrections that would help make the economics of investing in Louisville work.

"The private sector feedback from the RFI helped us survey our existing regulatory process to see what was working and what wasn't — providing access to rights of way, permitting, bonding ..." explains Smith. "If people want to lay fiber, they need to know the cost of doing business in that market."

The RFI pushed Louisville to confront its fiber-readiness. They made adjustments to attract vendors, such as increasing the proposed franchise period from 15 to 20 years and reducing the bonding requirement.

The city's open attitude and willingness to work with new vendors and multiple vendors at once also contributed to its later success. Louisville didn't wait for a single upgrader like Google Fiber or AT&T to come knocking. They also didn't rework city regulations and conditions to accommodate any one specific potential partner. Instead, Louisville made general, business-friendly, fiber-friendly policy changes and then allowed the companies to come to them.

The Local Governance Challenge of Fiber Projects

Of course, a vocal, supportive group in a city needs a government champion to represent its interests. The problem? In most local government structures, it is no one's job to specifically secure better, cheaper, faster broadband. Though CTOs and CIOs have sometimes been proactive and taken these projects on, they are not required to do so. Champions are often champions because they chose to step out of their job description and make this issue their problem.

This preliminary, structural obstacle is one that likely prevents the topic of next-generation, competitive speeds from even being raised in the first place. On top of that, fiber infrastructure is often dismissed as outside the purview of the public sector.

"But there is something new about this issue and new about the way government works in it," Smith observes. "Attitudes are shifting now that mayors are being asked about it with microphones in their face ..."

Facing the Reality That Cities Compete

Cities compete to recruit talent, retain talent, attract businesses, fuel startups and provide better, more efficient government services. That was not far from Ted Smith's mind as Louisville pursued its first steps in seeking a fiber upgrade.

"Telecommunications is absolutely part of public infrastructure," Smith emphasizes. "Whatever energy your city puts into water, sewage and electricity, you have to have a similar dedication. You have to remain competitive." Further, he had the full faith and support of his boss Louisville Mayor Greg Fischer who drives that 21st-century infrastructure vision.

Chattanooga — perhaps one of the most widely cited gigabit fiber success stories in the country — is just about a five-hour car ride south of Louisville. Charlotte and Atlanta are both nearby and have been tapped by Google and AT&T for potential gigabit upgrades. Huntsville, Alabama hired a consultant to explore the feasibility of a citywide network. As more southeastern cities pursue and secure faster Internet speeds, others will likely follow. In the case of Louisville, the city took ownership over the issue before inaction became a competitive disadvantage.

The Works is made possible with the support of the Surdna Foundation.

BECOME A NEXT CITY MEMBER TODAY

Denise Linn is an Ash Center summer fellow in innovation with the Gig.U project and is a master in public policy candidate at the Harvard Kennedy School of Government.

TAGS: INTERNET ACCESS, GOOGLE FIBER

CITY NEWS

Louisville Joins Next-Generation Broadband Communities to Launch Next Century Cities

October 21, 2014

Mayor Fischer announces Louisville as a leading member of national initiative to advance fast, affordable, reliable Internet

LOUISVILLE (October 21, 2014) – This morning, Louisville was featured in the launch of Next Century Cities, a bipartisan, city-to-city initiative dedicated to ensuring the availability of next-generation broadband Internet for all communities.

"A high-speed broadband network has quickly become viewed as critical urban infrastructure, similar to electricity, water and roadways," Mayor Greg Fischer said. "As a city we want to create a world-leading gigabit-capable network with comparable and reasonable prices that will foster innovation, drive job creation and stimulate economic growth."

From the start, Louisville made a commitment to make general, business-friendly, fiber-friendly policy changes to attract companies.

In 2013, Louisville issued a global call for companies and organizations to consider building a high speed gigabit network in Louisville.

The request's three goals:

- Creating a world-leading gigabit-capable network across the city to foster innovation, drive job creation and stimulate economic growth;
- Providing free or heavily-discounted gigabit 100MB (minimum) internet service over a wired or wireless network to underserved and disadvantaged residents;
- Delivering gigabit internet service at prices comparable to other gigabit fiber communities across the nation.

After a successful RFI/RFP process, Louisville's Metro Council, in July, approved three new 20-year franchise agreements for fiber network buildout with: BGN, SiFi and FiberTech.

Louisville continues to focus on grassroots support for the future network from city residents, academics and the business community.

Engagement occurs through a web-based tool, Louisville Fiber, providing information on the three vendors, project updates and basic facts about fiber infrastructure.

"Across the country, we're seeing cities hungry to deploy high-speed Internet to transform communities and connect residents to better jobs, better health care, and better education for their children," said Deb Socia, Executive Director of Next Century Cities. "Mayor Fischer and Chief of Civic Innovation Ted Smith are joining other leaders across the country to roll up their sleeves and get the job done. Next Century Cities is committed to celebrating these successes, demonstrating their value, and helping other cities to realize the full power of truly high-speed, affordable, and accessible broadband."

Next Century Cities is a new initiative of 31 cities nationwide joining together to recognize the importance of leveraging gigabit-level Internet to attract new businesses and create jobs, improve health care and education, and connect residents to new opportunities.

Together with Louisville, Next Century Cities will support communities and their elected leaders, including mayors and other officials, as they seek to ensure that all have access to fast, affordable, and reliable Internet. Participating cities will work with each other to learn about what works - and what doesn't - so that every community has access to information that can help them succeed. Cities will also work together to raise awareness of this important issue to all Americans.

"Joining Next Century Cities is a great way for Louisville to work with other cities facing similar challenges," said Mayor Fischer. "Collaboration is imperative and it fuels the exchange of ideas which contributes to the success of cities around the country. Next Century Cities will help provide an adequate foundation to propel Louisville forward in a technology-based economy."

Today's launch, held at a dynamic co-working space for Santa Monica's technology companies, convened mayors and other leaders from cities, including Austin, Kansas City, Portland and San Antonio for a cross-cutting discussion of what's worked in their cities and how to expand fast and reliable Internet nationwide. ***(See below for a full list of inaugural partner cities).***

Founding city leaders agreed on the importance of next-generation broadband for thriving 21st century communities. The launch event also featured a group discussion among additional mayors, a demonstration of the potential of gigabit Internet connections for cities, and a panel with leading technology officials. Register to join the live webcast from 9:30am – 1:00pm PT/12:30pm – 4:00pm ET at <http://conta.cc/1DW073w> (<http://conta.cc/1DW073w>).

Next Century Cities: Inaugural Partner Cities

- Ammon, ID
- Auburn, IN
- Austin, TX
- Boston, MA
- Centennial, CO
- Champaign, IL
- Chattanooga, TN
- Clarksville, TN
- Jackson, TN
- Kansas City, KS
- Kansas City, MO
- Lafayette, LA
- Leverett, MA
- Louisville, KY
- Montrose, CO
- Morristown, TN
- Mount Vernon, WA
- Palo Alto, CA
- Ponca City, OK
- Portland, OR

- Raleigh, NC
- Rockport, ME
- San Antonio, TX
- Sandy, OR
- Santa Cruz County, CA
- Santa Monica, CA
- South Portland, ME
- Urbana, IL
- Westminster, MD
- Wilson, NC
- Winthrop, MN

###

CITY EVENTS

Yard Art for Seniors

(/events/yard-art-seniors)

Line Dancing for Seniors

(/events/line-dancing-seniors)

CITY NEWS

Submitting an Anonymous Tip to the ATF

(/news/submitting-anonymous-tip-atf)

Degrees Work to help workers finish college degree

(/news/degrees-work-help-workers-finish-college-degree)

Featured In...

Mayor Greg Fischer (/government/mayor-greg-fischer)


FTTH COUNCIL

Follow

A non-profit association of companies and organizations involved in fiber to the home. All fiber, all the way!
Mar 16, 2016 · 5 min read

In depth on pole attachments, "one touch make ready" and what's going on in Louisville

Last fall, the Fiber to the Home Council released guidance on streamlining make-ready policies for pole attachments to accelerate the deployment of high performance broadband networks. The Council proposed that communities adopt "one touch" policies which would allow a single construction crew—with sufficient skill and experience to be approved and chosen by the pole owner—to complete all the work to make a pole ready for a new attachment. "One touch" not only accelerates deployment but it reduces the disruption and inconvenience in a community's streets that come from multiple construction crews performing "make ready" to move existing attachments and a final crew to attach the new entrant. "One touch" also is equitable because the use of a recognized authorized contractor protects the pole owner and other companies or entities that have equipment attached to poles, and all communications attachments have the same right to use the "one touch" process.

Not surprisingly, some entrenched companies are not fans of a "one touch" policy. Case in point: AT&T's just filed lawsuit against the Louisville and Jefferson County Metro Government which seeks to nullify its "one touch" ordinance. The Louisville ordinance is reasonable, balanced, and enlightened public policy. It provides that once an applicant for an attachment receives approval from the pole owner, the attacher, at its own expense using a qualified construction crew pre-approved by the pole owner, can perform make ready within the Communications Worker Safety Zone to move non-electric supply facilities to facilitate a new attachment in accordance with the design plans approved by the pole owner. If the relocation of facilities would cause or would reasonably be expected to cause an outage to a customer of an existing attachment, then thirty days' notice would be required before the attacher could do the work. The Louisville ordinance also provides for post work inspection, at the attacher's expense, by the pole owner and the existing attacher(s) whose

facilities were moved and remedial work if needed with the costs to be borne by the new attacher.

AT&T challenges the Louisville ordinance in federal court on the grounds that the ordinance conflicts with federal and state law and exceeds the jurisdiction of the Metro Government. The lawsuit presents the opportunity for the federal courts, especially those in home-rule states, to put to rest the notion that municipalities do not have the authority to adopt rules governing the work in their public streets and other rights-of-way controlling the work done by construction crews simply because that work impacts communications providers that separately may be regulated by the FCC or State public utility commissions.

In the Louisville case, moreover, the federal law AT&T cites is not even applicable to pole make ready work. The FCC has recognized at least twenty states that have certified that they regulate the rates, terms, and conditions governing access to poles by competitive telecommunications carriers, rendering federal law and regulation inapplicable. Kentucky is one of them. This means that the Louisville ordinance regarding make ready work cannot possibly be preempted by federal regulation. Anyway, the ordinance is consistent with the central point of the federal regulatory framework. FCC regulations explicitly recognize the ability of new attachers to use approved contractors to perform all make ready work in the communications space, subject to certain conditions. While those conditions posit that certain time periods must pass without existing attachers performing the work, the FCC recognizes that would-be attachers should, at some point, have the ability to perform make ready themselves, including relocation of existing attachments, using approved contractors.

Even more importantly, given that Kentucky has reverse preempted (thus making federal law inapplicable), the Louisville ordinance is consistent with State law. Section 278.040(2) of the state laws recognizes that the Public Service Commission (PSC) of the State "shall have exclusive jurisdiction over the regulation of rates and service of utilities." And AT&T argues that regulation of rates and services of utilities includes the regulation of access to poles and rates for attachment. But AT&T's complaint apparently overlooks that Section 278.040(2) includes an important exception and that the statutory authority of the PSC to regulate rates and services of utilities

does not "limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions." The Louisville ordinance is precisely an exercise of the police jurisdiction of a city and political subdivision of the State over access to the rights-of-way in which the poles are located.

Louisville, operating in a home-rule State, also has the authority to "exercise any power and perform any function within its boundaries . . . that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute." KRS 82.082(1). The Kentucky statutes make clear when a power or function conflicts with a statute, namely that occurs only when "it is expressly prohibited by a statute or there is a comprehensive scheme of legislation on the same general subject embodied in the Kentucky Revised Statutes..." KRS 82.082(2). Further, the statute that AT&T cites to defeat the Louisville ordinance on state law grounds (KRS 278.040(2)) makes clear that the authority granted to the PSC does not limit the police jurisdiction of the local governments. Indeed, the Louisville ordinance invokes that provision, as well as KRS 82.082, as the foundation for its action. In short, there is no conflict between the Louisville ordinance and state law.

Many local governments operate under constructs similar to that of Louisville where the state recognizes their police authority over the use of the public-rights-of way. Whether local governments are subject to home rule where municipal authority can be presumed within its borders unless expressly limited by the States or subject to the so-called "Dillon's Rule"—where municipal power must be expressly or impliedly delegated by the state legislature—municipal authority inherently includes the authority to regulate access to rights-of-way, including access to utility poles in the rights-of-way. This result makes complete sense: if a local government could not require "one touch" construction on poles located in the public rights-of-way, it would be unable to fulfill its mandate to hold the public rights-of-way in trust for citizens and businesses, including not only the new attacher, but the existing attachers themselves which occupy, and attach to the utility poles, in the public rights-of-way as a result of authority granted by the municipal government.

3/2/2017

In depth on pole attachments, "one touch make ready" and what's going on in Louisville – Fiber on Fire – Medium



THE LANE REPORT
The Lane Report Kentucky's premier statewide business news source for 32 years.
Click here to subscribe

Sign up for the Faster Lane email newsletter

GO

The Lane Report

WHERE THE NEWS IS
MADE BY THE READERS.

UNDERWRITERS OF
THE LANE REPORT

IGE KU
PPL companies

Search The Lane Report...

SEARCH

SHARE

Tweet

0

G+

AUGUST 16, 2016

0 COMMENTS

Louisville earns national award for plans to develop Gigabit Experience Center

Will receive \$30,000

LOUISVILLE, Ky. (Aug. 16, 2016) — Next Century Cities today announced that Louisville will be the recipient of the inaugural Charles Benton Next Generation Engagement Award for its plan to develop a Gigabit Experience Center. Louisville was one of three cities recognized for projects that harness high-speed internet to enhance civic engagement and democratic participation. The other two cities are Austin and Raleigh.

Louisville will receive \$30,000 that it plans to use to identify and wire an existing community center in West Louisville with gigabit connectivity, providing access to digital training, entrepreneurship, and civic engagement opportunities.

"Gigabit connectivity is a key to creating socio-economic opportunity and equity in a global economy — driving innovation, expanding our economy and providing residents with new opportunities," Mayor Greg Fischer said. "The Gigabit Experience Center will allow us to help our citizens see the enormous potential this technology has for reshaping our city."

Through the Gigabit Experience Center, city leaders are seeking to increase awareness about the importance of high-speed internet access and to provide an opportunity for residents to build their digital skills.

At the center, citizens will be able to experience virtual reality and take classes on innovation. The center will also include connectivity stations for residents, artists and musicians co-creating engaging technology exhibitions, and more.

The Benton Award was given by Next Century Cities, a nonprofit membership organization of over 145 mayors and city leaders nationwide committed to ensuring access to fast, affordable and reliable internet access for their citizens. As a founding member, Louisville has been a member of Next Century Cities since its inception in 2014.

In addition to providing expert technical assistance as the program gets underway, Next Century Cities will also elevate Louisville's creative use of next-generation broadband to bolster civic engagement and will promote replication of the Gigabit Experience Center project nationwide.

JOIN THE DISCUSSION

Today's business and economic news from across Kentucky

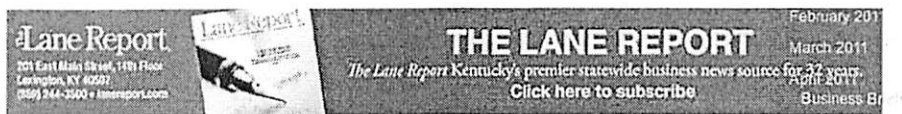
Nominate an Outstanding Woman in Business
Who are the outstanding Kentucky businesswomen that readers of The Lane Report should know about?



- Electrolux acquires Louisville-based Grindmaster-Cecilware
- Kentucky's unemployment rate at 5% in January
- OneJet increases nonstop daily flight offerings from Pittsburgh to Richmond and Louisville
- Nuclear power bill approved by Senate
- Kenton County receives \$220,000 Community Development Block Grant
- Medical review panel bill clears House, returns to Senate
- Erlanger substance abuse and recovery programs receive \$220,000 grant
- Nominees named to fill vacancy for Circuit Court in Butler, Edmonson, Hancock and Ohio counties
- Financial Empowerment Summit to be held March 9 in Louisville
- KYTC seeking public input on work zone safety experiences
- Two Ky. radio stations among finalists for National Association of Broadcasters award
- Kentucky State Fair Board launches new brand, logo and website

Click here for more Faster Lane stories

March 2010
IF YOU'RE IN
BROADBAND TO WIN



SELECT



Louisville wins ultra high-speed internet grant

By **MICKEY MEECE** | August 16, 2016 2:44 pm

One day soon a community center in West Louisville will boast one of the fastest internet connections around, thanks to a technology grant the city received Tuesday.



Next Century Cities, a nonprofit membership organization of

over 145 mayors and city leaders nationwide, announced that Louisville was one of three winning cities for its inaugural Charles Benton Next Generation Engagement Awards. Raleigh, N.C. and Austin, Tex., were the other grant winners.

Louisville will use its technology grant to wire a West Louisville community center with gigabit connectivity. | Photo via Creative Commons.

The cities were selected “for proposing innovative programs that will use high-speed broadband to improve civic engagement and democratic participation.”

The three municipal governments that won were each awarded \$30,000 and will receive hands-on technical assistance for the next year to help drive their projects forward, Next Century Cities said.

Ted Smith, chief of civic innovation for the mayor's office, said Tuesday "This grant from Next Century Cities is fantastic."

"Our intentions are to help our community have at least one place they can go and experience gigabit internet," he added.

City officials plan to wire a not-yet-named community center with gigabit connectivity, creating a Gigabit Experience Center. The center will serve as a hub, providing access to digital training, entrepreneurship and civic engagement opportunities.

"We think this is going to be a great opportunity to have an experience showcase in a West Louisville neighborhood," Smith said, adding, "people from all over Jefferson County can head on over and see what that's like."

The name and location of the community center will be announced soon, Smith said.

The grant will help get the costly infrastructure in place. "We think it's going to be a great thing to have in our community and a great opportunity to learn more about the importance of ultra high-speed internet."

For the last several years, Smith and Mayor Greg Fischer have been trying to make Louisville a high-speed internet/fiber friendly city.

In a statement Mayor Fischer said, "The Gigabit Experience Center will allow us to help our citizens see the enormous potential this technology has for reshaping our city."

Copyright © 2017 Insider Louisville. All Rights Reserved. Terms of Use Privacy Policy

FCC: Louisville's One Touch policy doesn't violate federal law

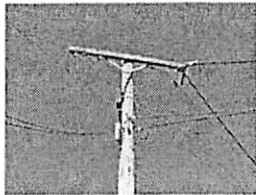
Jamie McGee, jmcgee@tennessean.com

Published 1:03 p.m. CT Oct. 31, 2016 | Updated 5:04 p.m. CT Oct. 31, 2016

Ready

"One
Touch
Make
Ready"
dispute
in
Nashville

look like
anyway?



(Photo: Getty Images/iStockphoto)

Louisville, Ky.'s, One Touch Make Ready policy, similar to a [controversial pole attachment ordinance](#) ([/search/%22One%20Touch%20Make%20Ready%22/](#)) in Nashville, does not conflict with federal regulations, according to the Federal Communications Commission.

The FCC issued a statement Monday related to a lawsuit filed by AT&T against Louisville. Because Kentucky has opted out of federal pole-attachment rules, federal regulations "simply do not apply here," FCC General Counsel Howard J. Symons said in the court filing.

Following Louisville, Nashville passed its One Touch Make Ready ordinance in September as a means to expedite the installation of Google Fiber internet, and both AT&T and Comcast have sued Nashville in response. They argue that pole attachment regulation for privately-owned poles falls under the jurisdiction of the FCC and that the city lacks the authority to regulate poles owned by Nashville Electric Service.

While the FCC's statement is a positive sign for Google Fiber in Louisville, its relevance to local lawsuits concerning One Touch Make Ready in Nashville is still unclear.

Kentucky is among 20 states that have certified that they regulate their own pole attachment terms and conditions, which allows them to avoid federal oversight. Tennessee has not pursued this certification, according to Metro Council special counsel Mike Jameson, which could lead to a different analysis for the lawsuit against Nashville.

"In Louisville, if AT&T wins the federal preemption argument in their summary judgment motion, it will be good news for AT&T here in Nashville," Councilman Bob Mendes wrote in his blog earlier this month. "Due to some nuances in Kentucky law that are different than in Tennessee, the converse is not necessarily true. If AT&T loses its summary judgment motion, it might be, but won't necessarily be, bad news for them in the Nashville lawsuit."

A separate part of the FCC's argument was the alignment of One Touch Make Ready with its overall policies meant to accelerate deployment of information technologies and promote competition. The One Touch Make Ready ordinance supports those objectives, according to Symons.

"As a general matter, promoting the deployment of competitive broadband infrastructure through one-touch make-ready policies is consonant with the goals of federal telecommunications policy, the Communications Act, and applicable FCC regulations," Symons wrote.

The One Touch Make Ready ordinance allows new internet providers to move existing lines on utility poles in one session. Previously, each existing provider had to move its own line to make room for an additional cable, a process that could take several months per provider.

AT&T and Comcast opposed the ordinance because it could lead to service disruptions and safety issues if lines are moved improperly. AT&T also made the case that it violated contracts with union workers, but Metro Council ultimately sided with Google Fiber.

Google Fiber officials welcomed the FCC's statement.

"We're pleased to see that the Federal Communications Commission this morning filed a supportive statement in the Kentucky court with regard to the AT&T lawsuit over One Touch Make Ready, a common sense measure (https://urldefense.proofpoint.com/v2/url?u=http-3A-googlefiberblog.blogspot.com_2016_02_standing-2Dwith-2Dlouisville.html&d=DQMFaQ&c=gOrgfQB8xVH7F0IP7MQh8CvVXMBvYqNyP3LuSSb8Lw&r=XYpR5GA5Ue_1G98SAIFM4XXdINC8sH16-Egl_iHqL4&m=Wv9Nbmua1_zF2LVvCFBOnO8gAIO7XGx2hQB6cYsGs-s&s=2eaLRw_b5XF4xQ8Rq7TCUwioNvRBDdiv-mplAlkH3ll&e=1) passed by Louisville earlier this year to bring superfast Internet to residents more safely and quickly," Google Fiber officials said in a statement. "We fully support the FCC's conclusion that there is no conflict between the federal pole attachment regulations and the principles of OTMR."

Nashville Electric Service takes legal action, cites "impossible position"

In a separate filing (<http://story.money/tech/2016/10/31/nas-takes-legal-action-controversial-one-touch-make-ready-ordinance-backed-google-fiber/93062794/>) Monday, Nashville Electric Service requested for declaratory relief with Davidson County Chancery Court related to Metro's same pole attachment ordinance. Officials said NES, which owns 80 percent of local utility poles, had been put in an "impossible position" of complying with either the ordinance or existing contracts.

Through the declaratory relief request, NES is seeking clarity on its rights and obligations so that it can avoid potential lawsuits. AT&T has sent NES a letter that "amounts to a threat to sue" NES if it complies with the new ordinance, according to the filing.

"It is in the best interest of our customers and the citizens of Nashville to avoid protracted and costly litigation," said NES President and CEO Decosta Jenkins. "We look forward to resolving this issue as quickly and efficiently as possible."

Mayor Megan Barry said Metro backed NES's decision to take the matter to court and that the additional clarity could end up saving taxpayer money.

"We believe in One Touch Make Ready and look forward to defending its legality," Barry said in a statement. "Our focus is simply on providing services to our citizens, who have expressed their desire for those services through their elected representatives."

Reach Jamie McGee at 615-259-8071 and on Twitter @JamieMcGee_.

MOST POPULAR STORIES

NWS confirms tornado hit Middle Tennessee

(<http://www.tennessean.com/story/news/2017/03/01/tornado-watch-issued-middle-tennessee/98571120/>)

Former Nashville Vice Mayor Jay West dies at 65

(<http://www.tennessean.com/story/news/politics/2017/03/01/former-nashville-vice-mayor-jay-west-dies-65/98601546/>)

Haslam gas tax bill gutted with amendment, survives initial vote

(<http://www.tennessean.com/story/news/politics/2017/03/01/haslam-gas-tax-bill->

~~guttled-amendment-survives-initial-vote/98576292/)~~

Slain Nashville nurse's family pleads for help finding killer

(<http://www.tennessean.com/story/news/crime/2017/03/01/slain-nashville-nurses-family-pleads-help-finding-killer/98581082/>)

Blake Shelton celebrates at The Sutler in Nashville

(<http://www.tennessean.com/story/entertainment/music/2017/03/01/blake-shelton-celebrates-sutler-nashville/98569674/>)

Read or Share this story: <http://tnne.ws/2eN8cD1>